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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No._____

CARPINTERIA LEMON ASSOCIATION, a corporation, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

SEABOARD LEMON ASSOCIATION, a corporation, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

OXNARD CITRUS ASSOCIATION, *et al.*, *Petitioners,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

SOMIS LEMON ASSOCIATION, a corporation, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

SANTA CLARA LEMON ASSOCIATION, a corporation, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners pray that a writ of certiorari issue to review the Decrees of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled cases on February 13, 1957.

Citations to Opinions Below.

The opinion of the United States Court of Appeals for the Ninth Circuit printed in Appendix B hereto is reported in 240 F. 2d 554.

Jurisdiction.

The decrees of the United States Court of Appeals for the Ninth Circuit, in all five of the above cases were entered on February 13, 1957 and are printed in Appendix B hereto. Rehearing was denied on February 7, 1957 (Appx. B). The jurisdiction of this Court is invoked under 28 U. S. C. A. 1254.

Questions Presented.

Whether the United Packinghouse Workers of America Local 78 was substantially the same Union as the United Fresh Fruit and Vegetable Union, L.I.U. No. 78, C.I.O., or whether it was a different Union from that which was originally certified by the National Labor Relations Board as the bargaining agent following the consent election.

Whether the record as a whole of the proceedings before the National Labor Relations Board substantially supported the finding that only a change of name and affiliation were involved and whether the Court below was thereby precluded from reviewing these Findings of the National Labor Relations Board.

Statute Involved.

The statutory provision here involved is Ch. 7, Labor Management Relations Act 1947, 29 U. S. C. A., Section 159. This is printed in Appendix A.

Statement.

The National Labor Relations Board issued orders on April 13, 1955, directing all five of the petitioners to bargain collectively with the United Packinghouse Workers of America Local 78. The five petitioners filed petitions in the United States Court of Appeals for the Ninth Circuit for review of the Order of the Board on July 21, 1955. The jurisdiction of the United States Court of Appeals for the Ninth Circuit was invoked under the provisions of 29 U. S. C. A. 160 f. The United States Court of Appeals in a two to one decision upheld the decision of the Board in an opinion dated December 11, 1956, and the Court entered decrees enforcing the orders of the Board in all five cases on February 13, 1957.

The petitioners in all five of the cases here before the Court are separate nonprofit cooperative associations engaged in the harvesting, grading and packing of citrus fruit.

In November of 1953, a consent election was conducted by the National Labor Relations Board in each of petitioners' five plants, and the United Fresh Fruit and Vegetable Workers L.I.U., No. 78, C.I.O. (hereinafter called "Fruit and Vegetable Union") was elected by a majority of the employees, and in the latter part of November, 1953, the Board certified the said Union as the exclusive bargaining representative of all of the employees in the petitioners' five plants. At this time the said United Fresh Fruit and Vegetable Workers L.I.U., No. 78, C.I.O. was an independent Union chartered directly by the C.I.O. as a Local without affiliation with any of the C.I.O.'s international Unions.

Collective bargaining was begun and continued for approximately three months when the majority of the

workers in each of the five plants signed and delivered to petitioners a petition repudiating the Union and demanding that henceforth the petitioners bargain with the "Employees' Committee". Petitioners refused to bargain any further with the Union and the Fruit and Vegetable Union thereupon filed Unfair Labor Practice charges against all five of the petitioners.

Shortly after these charges were filed the Fruit and Vegetable Union became involved in financial and organizational difficulties [R—S.C. 236, 239]*, and on March 1, 1954, the National C.I.O. appointed one Ken Gillie as administrator of the Union [R—S.C., 234], and the administratorship continued until the charter of the said Union was terminated on or about July 1, 1954.

During this time a Committee on Jurisdiction within the National C.I.O. had held a number of meetings and had recommended that the Fruit and Vegetable Union affiliate with the United Packinghouse Workers of America International C.I.O., an international Union holding membership in the C.I.O. [R—S.C., 231]. These recommendations were subsequently carried out and on or about July 1, 1954, the C.I.O. cancelled the charter of United Fresh Fruit and Vegetable Workers L.I.U., No. 78 [R—S.C. 228], and the Packinghouse Workers of America International C.I.O. issued a charter to United Packinghouse Workers of America Local 78 (hereinafter called the "Meat Packers Local 78") [R—S.C., 228, 229]. Thereupon, the Meat Packers International appointed its Vice President, one Anthony T. Stephens, whose offices were in Chicago, Illinois, as administrator in charge

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*R—Record.
S.C.—Santa Clara.

of the Meat Packers Local 78 [R—C., 117].* The executive board of the Meat Packers International also appointed one Gilbert Simonson, an international representative of the Meat Packers International as deputy administrator of the Meat Packers Local 78. Gilbert Simonson as deputy administrator worked under the direction and control of administrator Stephens, whose offices were in Chicago [R—C., 114, 117]. Under the administratorship of Anthony T. Stephens and deputy administrator Gilbert Simonson there were no officers and there was no executive board in Meat Packers Local 78, all offices and the said executive board having been set aside [R—C., 118, 119]. The said administrator and the deputy administrator both appointed by the International Union holds and exercises complete power and authority over the Meat Packers Local 78 [R—C., 118, 119].

On or about the 21st day of September, 1954, the Regional Director of the National Labor Relations Board, over the objection of the petitioners [R—S.C., 36], amended the certifications previously issued substituting the Meat Packers Local 78 as the exclusive bargaining representative for the employees in all five of the petitioners' plants in place of the Fruit and Vegetable Union [R—S.C., 42, 43].

The Trial Examiner of the National Labor Relations Board made a finding of fact to the effect that there was merely a change of name and affiliation. The National Labor Relations Board adopted these findings, and the United States Court of Appeals for the Ninth Circuit upheld the Board (majority opinion—Appx. B). The

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*R—Record.
C—Carpinteria.

minority of the Court, however, in a dissenting opinion, held that the facts showed conclusively that the two Locals—the Fresh Fruit and Vegetable Union, No. 78, and the Packinghouse Workers Union Local 78—were entirely different entities and that the National Labor Relations Board had certified an entirely different Union than that voted for in the consent election by the employees of the petitioners' five plants (dissenting opinion—Appx. B.)

Reasons for Granting the Writ.

1. The decision of the court below in the instant case is directly in conflict with the decision of the United States Court of Appeals for the Sixth Circuit in the case of *Dickey v. National Labor Relations Board*, 217 F. 2d 652. The *Dickey* case presented the same identical question of law in a strikingly similar fact situation. Referring to the *Dickey* case in his dissenting opinion in the instant case in the court below, Judge Fee said:

> "In the above cited case [*Dickey v. National Labor Relations Board*, Sixth Circuit, 217 F2d 652 referred to above], an amendment to certification was held void upon circumstances which afford no logical distinction. Here, if another election had been held it is apparent United Packinghouse Workers of America Local would not have been chosen as the bargaining agent.
>
> "The two Unions are not identical. The engagements of the previous Local toward the workers employed by the various appellants and toward the employers are not binding on the present unit . . ."

2. Settlement of this question by this Court is of great importance because the rights of all of the em-

ployees in petitioners' five plants are involved. These workers originally voted to be represented by the Fruit and Vegetable Union Local 78. Their Union was placed under an administrator by the C.I.O. Subsequently and while such administratorship was still in effect, the charter was cancelled by the C.I.O. and a new charter was issued by the Packinghouse Workers of America International to the United Packinghouse Workers of America Local 78, and contemporaneously with this a Vice President of the Meat Packers International in Chicago was appointed by the International to take control of the Local as an administrator. The Local at this time had no officers and no executive board. Under these circumstances the Regional Director of the National Labor Relations Board substituted the Meat Packers Local 78 as the exclusive bargaining agent for all of petitioners' employees. In his dissenting opinion in the instant case in the court below, Judge Fee said (dissenting opinion—Appx. B):

> "The sanction of the courts of such control of a Local without consent thereto by Local workers at a particular plant at a board supervised election is undemocratic and against the essential interests of the public at large."

Moreover, the question before the Court is of great importance because throughout the United States Unions are constantly reorganizing, amalgamating, merging with other Unions, or are changing their affiliations. In these cases the National Labor Relations Board is constantly faced with the problem of determining when and under what circumstances the successor Union can be substituted to the bargaining rights of the Union originally elected by the employees. One of the most important rights given the workers by the Labor Management Relations

Act is the right to be represented for collective bargaining by representatives of their own choosing. These rights of the workers are always affected by any decision of the National Labor Relations Board substituting a successor Union for a Union previously chosen at a consent election. It is, therefore, particularly important that the authority of the Board in this type of situation be clearly defined by the highest Judicial Authority.

3. The decision of the court below is believed to be erroneous and the conflicting decision of *Dickey v. N. L. R. B., supra,* correct. In the *Dickey* case, following the consent election, the Blacksmiths were certified as the exclusive bargaining representatives of the petitioners' employees. Following this election and certification, the Blacksmiths merged with the Boilermakers under a plan whereby the Blacksmiths were given three out of sixteen Vice Presidents. The Blacksmiths had complete control of the Union which the petitioners' employees voted for in the consent election. After the merger the Blacksmiths had three-sixteenths of the control of the new Union. In that case the Board approved, without discussion, the finding of the Trial Examiner that the Blacksmiths did not lose their identity as representatives of the employees by reason of the merger and that so far as the employer was concerned the situation represented only a "change of name". The Board contended that the finding of the Trial Examiner on this point was a finding of fact and that the approval by the Board of the substitution of the Boilermakers for the Blacksmiths was binding on the Appellate Court. In overruling the Board, the United States Court of Appeals for the Sixth Circuit held:

> "The question is squarely presented whether by amendment of the certification of representation the

Regional Director is authorized to substitute as exclusive bargaining representative a Union different from the one actually chosen by the men and certified . . ."

The Court then concluded:

". . . the regulations of the Board do not invest the Regional Director with such authority and if so they violate the express provision of 29 U. S. C. Supp. V, Section 157; 29 U.S.C.A. Section 157".

In the instant cases the facts are more extreme than in the *Dickey* case. In these cases petitioners' employees voted for the Fruit and Vegetable Union. At the time of the consent election the officers of the Fruit and Vegetable Union were in complete control of that Union. On September 21, 1954, when the Regional Director of the National Labor Relations Board substituted the Meat Packers Local 78 for the Fruit and Vegetable Union, the new Union was under the complete control of a Vice President of the Meat Packers International acting in the capacity of an administrator. Petitioners' employees had never voted for the Meat Packers International from whence came the authority and the control of the Meat Packers Local 78. The action of the Board in substituting the Meat Packers Local 78 was therefore in violation of the right of the workers to be represented by a union of their own choice.

The majority of the Court below held:

"The Board adopted the Trial Examiner's finding that there was merely a change of name and affiliation. From our consideration of the record as a whole we find that this determination is supported by substantial evidence. We are precluded by law

from reexamining any Board finding of fact in an Unfair Labor Practice case which is so supported. . . ."

Petitioners respectfully submit that this was error. The question involved was not a question of fact, rather a question of law. It is conceded that there was a change of name and a change of affiliation, and that Trial Examiner's and the Board's findings of fact, as regards these two matters, are correct. However, this does not resolve the legal question of whether or not the Meat Packers Union Local 78 is the same Union as the Union voted for in the consent election in view of all the other facts and circumstances of the case. The Trial Examiner's finding that there was only a change of name and a change of affiliation indicates that he has ignored or overlooked all the other undisputed facts relating to the transfer of the defunct Fresh Fruit and Vegetable Union Local 78 from an administrator appointed by the C.I.O. to an administrator appointed by and controlled by the United Packinghouse Workers of America International. It also indicates that he has ignored (the National Labor Relations Board and the majority of the Court below have also ignored) the undisputed fact that the administrator appointed and controlled by the United Packinghouse Workers of America International and deriving his power and authority solely from the said International, was in complete and absolute control of the new Union. These facts were undisputed, but the Trial Examiner (and the National Labor Relations Board and the court below) resolved the question of law involved by simply finding as a fact that there was only a change of name and a change of affiliation.

In referring to this point the dissenting Judge in the instant case in the court below stated:

". . . The clause in the consent election gave no authority for this substitution without the consent of the electors. The majority passes over this point in silence."

* * * * * * * *

". . . The assumption of dictatorial powers by the administrator and the deputy proves that the representation of the workers by the present unit is not legally or morally identical with the former Local which is now destroyed.

"The sanction of the courts of such control of the Local without consent thereto by Local workers at a particular plant, at a board supervised election, is undemocratic and against the essential interests of the public at large."

The majority of the court below further erred in deciding that the record as a whole contained substantial evidence to support the Board's finding that there was merely a change of name and affiliation. The court cited the case of *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474, as authority for holding that it was precluded by law from re-examining any Board finding so supported. Petitioners respectfully submit that the record as a whole shows conclusively that in addition to a change of name and a change of affiliation there was a complete transfer of power and authority from the Fruit and Vegetable Union which had been voted for in the consent election to the Meat Packers International which wielded this power and authority through its Vice President whom it appointed administrator of the new Union. The majority opinion states in support of its decision that although the

Packinghouse Workers sent in a new financial administrator to replace the one previously furnished by the National C.I.O., the officers remained the same. As the dissenting opinion points out, however, in a footnote, this is contrary to the evidence as set out in the record [R—C., 118, 119]. Under the administrator appointed by the Meat Packers International there was no executive board and there were no officers [R—C., 118, 119].

The majority cited the case of *Universal Camera Corp. v. N. L. R. B., supra,* in support of its conclusion that it is precluded by law from reviewing the findings of the Board. Petitioners respectfully submit that the *Universal Camera Corp.* decision not only does not preclude a review of the Board's findings but on the contrary actually enjoins a review in such a case as this. In that case this Court held:

> "We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that the courts must now assume more responsibility for the reasonableness and fairness of the Labor Board's decisions than such courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed upon them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed on the record as a whole by courts invested with the authority and enjoying the prestige of courts of appeal. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before

a court of appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of testimony of witnesses or its informed judgment on matters within its special competence, or both."

Conclusion.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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April 30, 1957.